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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Mahinder S. Uberoi, petitioner,
v.
City of Boulder, et al., respondents.

Mahinder S. Uberoi, petitioner,
v.
Henry F. Anton, et al., respondents.

PETITION FOR THE WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

MAHINDER S. UBEROI, pro se
819 Sixth Street
Boulder, CO 80302
303-442-2879

Questions Presented

I. Whether District Judge John L. Kane was disqualified for several independent reasons stated below?

(a) The respondents Anton et al. are the Regents and officials of the University of Colorado. Petitioner sued them for their employment discrimination against him because of his Asian Indian origin. In 1996 Judge Kane successfully applied to teach a course at the University. He was paid $5000.00. His request to teach again was denied but he continued to seek such employment even when petitioner's suit against the Regents and the officials of the University came before him. For instance, on April 22, 2003 he submitted an 8-page application to teach a course at the University. On September 8, 2003 he dismissed petitioner's case against the Regents and officials of the University incorrectly claiming that the petitioner had disobeyed his orders. On December 16, 2003 he was appointed to teach the course for pay of $3273.00. 28 U.S.C. § 455 (a) requires that a judge shall recuse himself if "his impartiality might be reasonably questioned."

(b) In 1988 Judge Kane took disability retirement under 28 U.S.C. § 372 (a), having been diagnosed as suffering from sleep apnea which is characterized by a cessation of breathing during sleep, which he claimed was caused by the stress of his judicial duties. After some two years, as a Senior District Judge, he was assigned limited judicial duties.

His health was further declining when on July 2, 2002 petitioner's case against the University was assigned to him. And he developed breast cancer. Finally, he announced that he will not hold any hearings from August 25, 2003 to December 31, 2003. And he will work in his chambers or at home. He had no or severely diminished physical and mental ability to perform his judicial duties when on September 8, 2003 he wrongly dismissed petitioner's case against the Regents and officials of the University.

(c) The November 22-28, 2001 issue of the weekly newspaper WESTWORD features Judge Kane. It is entitled KANE MUTINY. It states that Judge Kane held an informal "hearing" in his chambers at the U.S. Courthouse to denounce the federal drug laws because they are unjust and persons convicted of drug abuse can avoid time if they are related to a prominent politician. The paper quotes Judge Kane:

"Then there is Arizona Senator John McCain's wife, Cindy McCain, who admits to stealing Percocet and Vicodin from a charity. Even though illegal use of the pills - classified by the government as schedule 2 drugs which puts them in the same class as opium - carries a penalty of one year in prison, McCain is allowed to enter a treatment program, instead. This is a kind of crap, the hypocrisy of the whole thing...A couple [of judges] have said that I am fomenting disrespect of the law. Most say that that 'I can't give the appearance of being biased.'"

Judge Kane is unable to administer the law without regard to his extreme personal views and bias.

2. Whether the Tenth Circuit's refusal to order the disqualification of District Judge Kane is in conflict with the decisions of every other circuit in identical or similar circumstances?

3. Whether the Tenth Circuit's allowance of District Judge Kane to resolve petitioner's motion to disqualify Judge Kane is in Conflict with the Fifth Circuit Practice that a motion to disqualify a District Judge is heard by a District Judge from another District?

4. Whether the Court of Appeals' statement that in 1989 petitioner was enjoined from appearing pro se in the federal district of Colorado because he had filed pro se numerous frivolous and vexatious suits in the district is

refuted by the record which shows that petitioner had filed only two cases?

In the one case the Court ordered petitioner to engage in discovery for nearly four years, even though the defendants had not answered the complaint because they were resting on their motion to dismiss. The court resolved the motion nearly four years after it was filed. Then, the defendants answered the complaint, but before that the court set a date for discovery cut off. The court dismissed the case for petitioner's failure to meet the deadline. The court claimed that petitioner had more than sufficient time to complete discovery, nearly four years before the answer was filed and seven weeks after the answer was filed.

The other case was dismissed on defendants' fraudulent motion that it had become moot. It later proved not to be moot.

5. Whether the Tenth Circuit Court of Appeals' statement that petitioner recently filed a *frivolous* suit in the U.S. District Court for the District of Columbia is refuted by its own follow up statement that the Appellate Court affirmed the dismissal of the complaint for failure to state a claim?

The Tenth Circuit also stated that petitioner also filed an unsuccessful petition for writ of mandamus with the same federal district which he never did.

6. Whether the 1989 invalid and expired injunction prohibiting petitioner from appearing pro se should have been vacated or modified because of the changed circumstances, such as the fact that he had paid the attorney fees assessed against him which was the main reason for the injunction?

7. Whether the district court orders dismissing petitioner's two civil rights cases for his failure to retain an attorney to represent him in the two cases should have been

amended or modified on petitioner's motion that in several documented attempts he was unable to retain an attorney within the few business days allowed by the court?

8. Whether the clerk of the U.S. Court of Appeals for the Tenth Circuit acted without jurisdiction in the consolidated cases when he refused to transmit to the en banc court petitioner's motion for leave to file a one day late petition for rehearing and rehearing en banc, instead he transmitted the motion only to the 3-judge appellate panel which without jurisdiction denied the motion and thus prevented the full court from exercising its en banc power under 28 U.S.C. § 46 (c) to resolve the motion?

9. Whether the courts of the Tenth Circuit have denied petitioner a fair opportunity to litigate his civil rights cases such as by three times ordering petitioner to file a pre-trial order when the defendants in the case had not even answered the complaint because they were resting on their motion to dismiss the case which the court had not resolved?

List of the parties in the two cases that were consolidated in the United States Court of Appeals for the Tenth Circuit. Petitioner seeks review of the judgments of the Court of Appeals in the two consolidated cases.

MAHINDER S. UBEROI,
Petitioner,
v.

CITY OF BOULDER; K. YOKOMIZO-BURTON; DON SPICELY; GRETCHEN KING,
Respondents.

MAHINDER S. UBEROI,
Petitioner,

v.

HENRY F. ANTON; MAUREEN JOHNSON EDIGER; SUSAN C. KIRK; TOM LUCERO; JIM MARTIN; NORWOOD L. ROBB; JERRY G. RUTLEDGE; ROBERT SIEVERS; PETER STEINHAUER; JOHN BUECHNER; RICHARD BYYNY; PHILLIP DISTEFANO; ROSS COROTIS; MICHAEL LIGHTNER; WILLIAM M. MARINE; THOMAS J. NAPIERKOWSKI; ROBERT L. LORCH; ROBLEY D. RHINE,
Respondents.

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 2004

Mahinder S. Uberoi, petitioner,
v.
City of Boulder, et al., respondents.

Mahinder S. Uberoi, petitioner,
v.
Henry F. Anton, et al., respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

The petitioner, Mahinder S. Uberoi, respectfully prays that a writ of certiorari issue to:

(a) review the judgment of the United States Court of Appeals for the Tenth Circuit on the interlocutory appeal entered in the above proceedings on May 1, 2003, rehearing denied on August 27, 2003 and

(b) review the final judgment of the Court of Appeals entered in the above proceedings on October 18, 2004 rehearing denied on December 17, 2004.

OPINIONS BELOW

The opinion of the Court of Appeals for the Tenth Circuit on the interlocutory appeal has not been reported. It is reprinted in the appendix hereto, p. A13, *infra.*

The final opinion of the Court of Appeals has not been reported it is reprinted in the appendix hereto, p. A3, *infra.*

The interlocutory decisions of United States District Court for the District of Colorado in the two cases is reprinted in the appendix hereto, p. A21 and p. A22 *infra.*

The final decisions of the District Court in the two cases is reprinted in the appendix hereto, p. A 7 and p. A 8, *infra.*

JURISDICTION

Under 42 U.S.C. § 1981, § 1983, § 1985 (3) and § 1986, and 28 U.S. § 1331, § 1343 (1), § 2201 and § 2202, and IV, V and XIV Amendments of the U.S. Constitution, on November 1, 2001 petitioner filed in the United States District Court for the District of Colorado a civil rights case against respondents, the City of Boulder and its named police officials. He alleged that they had unlawfully seized his antique Volkswagen motor vehicle parked on his property, falsely claiming that it was a public nuisance. They sold it and kept all the proceeds. The case was assigned to Senior District Judge John L. Kane.

Under 42 U.S.C. § 1981, § 1983, § 1985 (3) and § 1986, I and IV Amendments, tort laws of Colorado and 28 U.S. § 1331, § 1343 (1), § 2201 and § 2202, on February 14, 2002 petitioner filed in the District Court a civil rights case against respondents Anton et al., who are the Regents and Officials of the University of Colorado. He alleged that they conspired to terminate his tenured professorship because of his Asian Indian origin and his opposition to their racially discriminatory employment practices. And Because under

Federal False Claims Act he had sued the Regents for overcharges on his and other federal grants and contracts. They publicly dismissed Uberoi for unstated cause.

Respondents Anton et al., moved to dismiss the case because allegedly in 1989 the District Court had enjoined petitioner from filing pro se any case in the District. On July 2, 2002 the case was reassigned to Judge Kane because the issue of the injunction arises in both cases. Judge Kane ordered petitioner to show cause why his two civil rights cases, filed pro se, should not be dismissed.

Petitioner moved the District Court to rule that the injunction was invalid, had expired by its own terms and any remnants of it should be vacated because of the changed circumstances and law.

District Judge Kane decided to enforce the injunction in both of petitioner's civil rights cases. Petitioner appealed the collateral orders to the Court of Appeals which affirmed the District Court decisions and denied the petition for rehearing on August 27, 2003. In orders signed on September 8, 2003, District Judge Kane dismissed petitioner's two civil rights cases for his failure to retain an attorney in each case within seven (7) business days.

On September 22, 2003 petitioner filed three motions, (1) Motion to Randomly Select a District Judge from Another District Who Shall Hold a hearing on Motion to disqualify Judge Kane, (2) Motion to Disqualify Judge John Kane from ruling on Plaintiff's [petitioner's] Motion to Alter or Amend Judgment and (3) Motion to Alter or Amend Judgment under Rule 59. On September 24, 2003 Judge Kane, without comment, denied the three motions in each of the two cases.

Under 28 U.S.C. § 1291 petitioner appealed to the United States Court of Appeals for the Tenth Circuit. On October 18, 2004 the court affirmed the judgments of the District Court.

The Clerk of the United States Court of Appeals for the Tenth Circuit transmitted petitioner's One-Day Late

Petition of Rehearing and Rehearing En Banc only to the 3-judge appellate panel which on December 17, 2004 denied the petition for rehearing, p. A2, *infra*.

Petitioner sought rehearing en banc by filing Motion for Leave to File One-Day Late Petition for Rehearing and Rehearing En Banc. The Clerk transmitted the motion only to the 3-judge appellate panel which, without jurisdiction, denied it. Under 28 U.S.C. § 461(c) only the full Court of Appeals had jurisdiction to consider the motion which deals with the en banc power of the court. Petitioner believes that his petition for en banc rehearing by the Court of Appeals remains unresolved until the motion is transmitted to and resolved by the en banc Court of Appeals. He seeks review of this jurisdictional issue here.

However, out of abundance of caution, petitioner is proceeding on the assumption that the time to seek review by certiorari in this Court began to run on December 17, 2004.

Justice Breyer on March 3, 2005 extended the time within which to file a petition for writ of certiorari to and including May 16, 2005.

The Jurisdiction of this Court to review the judgment of the Tenth Circuit is invoked under 28 U.S.C. § 1254 (1).

The Court on certiorari to review a final decree can reach back and correct errors in the interlocutory proceedings below. Toledo Scale Co. v. Computing Scale Co., 261 U.S. 399, 418 (1923).

STATUTES INVOLVED

28 U.S.C. § 455(a): Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

28 U.S.C. § 1654: In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein.

STATEMENT OF THE CASE

Petitioner, Mahinder S. Uberoi is a distinguished aerospace engineer, scientist and educator, as indicated in standard references, such as Who's Who in America or Who's Who in the World, current editions.

Petitioner's antique motor vehicle was parked on his private property about thirty feet from the street. He had removed the engine of the vehicle for some engineering research. However, one could only determine that fact by opening the engine compartment and/or by getting under the vehicle. The City of Boulder and its Police officials seized the vehicle, sold it and kept all the proceeds, under the City's ordinance that an inoperable motor vehicle on private property for more than thirty days is a public nuisance. On November 1, 2001 petitioner sued them in the federal district court. He alleged that their unlawful conspiracy was motivated by their prejudice against him because of his Asian Indian origin and violated his rights against unreasonable entries, search and inspection and deprivation of property without due process. And the ordinance is overly broad. The case was assigned to District Judge Kane.

On February 14, 2002 in the federal district court, petitioner sued respondents Anton et al., who are the Regents and officials of the University of Colorado, because they conspired to terminate on February 17, 2000 petitioner's tenured professorship because of his Asian Indian Origin and his opposition to their racially discriminatory employment practices. And because under the Federal False Claims Act he had sued the Regents for overcharges on his and other federal research grants and contracts.

The Respondents Anton et al., moved to dismiss the case because allegedly in 1989 the District Court had enjoined the petitioner from filing pro se any case in the district. The case was reassigned to Judge Kane. He ordered

petitioner to show cause why his two cases should not be dismissed unless he retained an attorney to represent him.

In the two cases petitioner filed motions to vacate or modify the remnants of the invalid and expired injunction because of the changed circumstances so that he may proceed pro se in his two cases. Judge Kane denied, without any comment, the motions. p. A21 and p. A22, *infra*.

Petitioner appealed these final interlocutory orders to the United States Court of Appeals for the Tenth Circuit. On petitioner's motion Judge Kane stayed his order until the final resolution of the appeal. p. A19 and A20, *infra*. On May, 1, 2003 the appellate court affirmed the district court orders. pp. A13-19, *infra*. On May 2, 2003 Judge Kane ordered that petitioner's two cases will be dismissed unless he retains an attorney by June 2, 2003 even though decision of the Appeals Court was *not final*. pp. A11-13, *infra*. Petitioner had time to petition for rehearing.

On August 27, 2003 the Appellate Court denied petitioner's petition for rehearing. On September 8, 2003 Judge Kane dismissed the two cases for petitioner's failure to retain an attorney within seven business days. pp. A7-9, *infra*.

Petitioner filed motions under Rule 59 to alter or amend the orders so the he may proceed pro se in his two cases because in several documented attempts he was unable to retain an attorney.

Petitioner filed motions to disqualify Judge Kane from ruling on the motion to alter or amend the orders. He discovered that from the outset, Judge Kane was required to recuse himself from the two cases for several independent reasons. E.g., his part-time employment with the University of Colorado where the respondents Anton et al., were the Regents and officials of the University.

The next day without comment Judge Kane denied all these motions. pp. A5-7, *infra*.

Petitioner appealed to the Court of Appeals which affirmed the dismissals on October 18, 2004. pp. A3-5, *infra*.

On December 17, 2004 the 3-judge appellate panel denied petition for rehearing. pp. A2-3, *infra*. Petitioner sought rehearing en banc by filing Motion for Leave to file One-Day Late Motion. The 3-judge panel denied the motion but it remains unresolved by the full court which has exclusive jurisdiction under 28 U.S.C. § 461 (c) to exercise its en banc power to resolve the motion. See under JURISDICTION, *supra*.

REASONS FOR GRANTING THE WRIT

I

District Judge Kane was required to recuse himself for several independent reasons.

JUDGE KANE'S 1996 PART-TIME EMPLOYMENT WITH DEFENDANTS REGENTS AND HIS CONTINUED INTEREST IN SUCH EMPLOYMENT

In 1996 Judge Kane successfully applied to teach a course at the University of Colorado as a part-time instructor. He was paid $5,000. His request to teach again was denied. Still he continued to seek such employment with the University. In the nine (9) editions of Who's Who in America, 1977 to 2005, Judge Kane states he is an Adjunct Professor at the University of Colorado.

On July 2, 2002 petitioner's civil rights case against Regents and officials of the University of Colorado was assigned to Judge Kane. Because of his relations with the University, Judge Kane was required to disqualify himself in the case since "his impartiality might reasonably be questioned." 28 U.S.C. § 455(a).

JUDGE KANE'S 2003 SUCCESSFUL APPLICATION FOR PART-TIME EMPLOYMENT WITH DEFENDANTS REGENTS

On April 22, 2003 Judge Kane submitted to the University an 8-page application to teach a course in the university as a part-time instructor. On September 8, 2003 Judge Kane wrongly dismissed Uberoi's civil rights case against the Regents and officials of the University. On December 16, 2003 the University appointed Judge Kane as a part-time instructor to teach a course in Spring 2004 for a pay of $3,273. It would appear that the University rewarded Judge Kane for his rulings favorable to it. Judge Kane was required to recuse himself in the case since "...his impartiality might reasonably be questioned." 28 U.S.C. § 455(a).

JUDGE KANE WAS IN ILL HEALTH AND UNFIT FOR HIS JUDICIAL DUTIES

In 2003 in support of his application for a part-time instructor at the University of Colorado, Judge Kane included his biography as it appears in the Almanac of Federal Judiciary. Which in relevant part states: "Kane assumed senior status in 1988 because of severe medical problems and did not return to work until August 1989."

Judge Kane's Health was again declining when on July 2, 2002 Uberoi's case against the University was assigned to him. His weekly judicial calendars show decreasing activity. Finally, he cancelled all the hearings for the week of August 25, 2003. And he announced that he will not hold any hearing UNTIL December 31, 2004. And he will work in his chambers or at home. The court staff has told petitioner that he was on medical leave from August 25, 2003 to December 31, 2003. He had developed breast cancer. Judge Kane had no or diminished physical and mental abilities to perform his judicial duties when on September 8, 2003 he wrongly dismissed Uberoi's case against the University. As the record shows he did not analyze any of the facts and legal arguments submitted by the parties. Without

comment he dismissed petitioner's two cases. Constitutional due process assures the petitioner that his cases are heard by a judge whose physical and mental abilities are not impaired. Judge Kane should have, but failed to recuse himself in the petitioner's two cases.

JUDGE KANE'S MUTINY AGAINST OUR CONSTITUTIONAL SYSTEM

The November 22-28 issue of the weekly news paper WESTWORD features Judge Kane. His color photograph covers the entire front page. It shows that he is sitting at his desk in the federal court house, holding a gavel. It is entitled KANE MUTINY. The article states that Judge Kane held an informal "hearing" to denounce the federal judicial system as corrupt. Because the persons convicted of drug abuse can avoid doing time if they are related to a prominent politician. The article quotes Judge Kane,

"Then there's Arizona Senator John McCain's wife, Cindy McCain, who admits to stealing Percocet and Vicodin from a charity. Even though illegal use of the pills-classified by the government as schedule 2 drugs, which puts them in the same class as opium- carries a penalty of one year in prison, McCain is allowed to enter a treatment program, instead This is a kind of crap, the hypocrisy of the whole thing...A couple [of judges] have said that I'm fomenting disrespect of the law. Most say that I can't give the appearance of being biased."

Judge Kane is leading a mutiny against our constitutional system He has a lifetime tenure to administer the laws without regard to his personal views. He cannot use his office in the federal courthouse to promote his mutiny. He should have first resigned. And then launched his mutiny.

Petitioner filed Motion to disqualify Judge Kane in his two cases. Because the constitutional due process assures that his cases are heard by a judge who can administer the laws

without regard to his personal views. Judge Kane denied the motion without comment. For this independent ground Judge Kane was disqualified in the petitioner's two cases.

In spite of all these facts requiring Judge Kane to recuse himself the Court of Appeals ruled that "no reasonable basis exists for calling the judge's impartiality into question." p. A5, *infra*.

II

TENTH CIRCUIT'S REFUSAL TO ORDER DISTRICT JUDGE KANE DISQUALIFIED IS IN CONFLICT WITH THE DECISIONS OF EVERY OTHER CIRCUIT IN SIMILAR OR IDENTICAL CIRCUMSTANCES.

United States v. Conforte, 624 F.2d 869, 881(9th Cir. 1980) held that when a judge's "[a]ttitude is somehow related also to a suspect or invidious motive such as racial bias or a dangerous link such as a financial interest, and only the slightest indication of the appearance or fact of bias or prejudice arising from these sources would be sufficient to disqualify."

Matter of Continental Airlines, 981 F.2d 1450 (5th Cir. 1993) ruled that the bankruptcy judge who accepted an offer for Partnership in the law firm representing the debtor after granting the debtor's motion for summary judgment should have disqualified him. 28 U.S.C. § 455 (a).

In Pepsico Inc. v. McMillen 764 F.2d 458 (1985) the appellate court held that the trial judge McMillen was disqualified when his agent contacted attorneys on both side of the case for possible employment with them after he leaves the bench, even though the exploration for employment was "preliminary, tentative, indirect, unintentional, and ultimately unsuccessful. And the extension of the exploration to both side may make the element of bias

less distinct, but the appearance of impartiality is not completely purged."

Scot v. United States, 559 A.2d 745 (D.C. App. 1989) ruled that the trial judge violated the Judicial Cannon providing that he should disqualify himself in any proceeding in which his impartiality might reasonably be questioned by actively negotiating with the executive office of the United States Department of Justice while presiding over criminal prosecution by the office of the United States Attorney for the District of Columbia, a division of the Department of Justice. ABA Code of Jud. Conduct. Cannon 3, subd. C(l).

TENTH CIRCUIT OPINION ALSO CONFLICTS WITH OPINIONS OF DISTRICT COURTS IN OTHER CIRCUITS

In Smith v. Sikorsky Aircraft, 420 F. Supp. 661 (C.D.Cal. 1976) the Judge was disqualified because the plaintiff's law firm was associated with an attorney who had in the past acted as attorney and counsel for the judge.

In United States V. Moskovits, 866 F.Supp 178 (1994), Moskovits was facing retrial for violation of drug laws while he was a student at the University of Pennsylvania. Trial Judge Louis H. Pollak informed the parties that he served as a part-time lecturer at the Law School of the University. But he did not disqualify himself because the University was not alleged to a patty or a victim of, any of the activities covered in the indictment. The University informed Moskovits that it would take disciplinary against him for his violation of University's Code of Conduct if he were convicted. Moskovits appearing pro se moved that Judge Pollak should disqualify himself under 28 U.S.C. § 455 (a) because the University had an interest in the trial even though it was not a named party in the case. Thereupon, Judge Pollak disqualifies himself.

III

TENTH CIRCUIT'S ALLOWANCE OF DISTRICT JUDGE KANE TO RESOLVE PETITIONER'S MOTION TO DISQUALIFY JUDGE KANE IS IN CONFLICT WITH THE FIFTH CIRCUIT PRACTICE THAT A MOTION TO DISQUALIFY A DISTRICT JUDGE IS HEARD BY A DISTRICT JUDGE FROM ANOTHER DISTRICT

Petitioner filed a motion that his motion to disqualify Judge Kane be heard by a District Judge randomly selected from all the Judges in another district. Judge Kane himself denied the motion. However, the Fifth Circuit follows the procedure demanded by the petitioner.

Potasnick v. Port City Const. Co., 609 F.2d 1101,1106 (5th Cir. 1980) was a case in the Southern District of Alabama. One side moved to disqualify trial judge William Brevard Hand. The motion was handled by Judge William Stafford of the Northern District of Florida. Potasnick at 112 held that:

1. The language of 28 U.S.C. § 455 eliminates so called "duty to sit".
2. The use of "might" reasonably be questioned in § 455 (a) clearly mandates that it would be preferable for a judge to err on the side of caution and disqualify himself in questionable cases.
3. In reviewing the exercise of judicial discretion under § 455, we cannot ignore that the disqualification of a judge in any given case does not cause delay or inconvenience which resulted in prior times. The growing number of federal judges, and the availability of rapid transportation to move those judges from place to place when necessary, makes the decision to disqualify less burdensome on the judicial system than in the times past; any inconvenience which does arise is more than outweighed by the need to protect the dignity and integrity of the judicial process.

IV

IN RESOLVING PETITIONER'S MOTION TO VACATE OR MODIFY THE INJUNCTION THE COURTS BELOW DID NOT CONSIDER THE CHANGE IN THE CIRCUMSTANCES AND THE LAW -

The District Court enjoined petitioner from filing pro se in the district any case because he had not paid attorney fees assessed against him in a case which was dismissed for his failure to complete discovery in an unreasonably short time set by the court. Petitioner has since paid the fees. In the injunction the court stated that it is directing the clerk not to accept any pro se complaints from Uberoi. But no directive was ever issued to the clerk. Because soon after, State of Colo. ex rel., et al. v. Jack E. Flemming, No. 89-1040 slip op. (10th Cir. October 10,1989) ruled that prohibiting pro se appearance was too broad. The clerk's office filed petitioner's two pro se complaints, stating that it has no court directive against such filings.

Petitioner stated numerous other facts and authorities in his motion of 17 pages and exhibits of 58 pages. Without any analysis Judge Kane ruled that the injunction "remains valid and in effect." pp. A21-23, *infra*, The Court of appeals affirmed the ruling. pp. A13-19, *infra*.

This put the Tenth Circuit opinion in conflict with the Eleventh Circuit opinion in Procup v. Strickland, 792 F.2d 1069 (11th Cir. 1986) that an injunction prohibiting pro se filings is overly broad.

The conflict should be resolved by this Court.

The Courts below should have modified or vacated the injunction when petitioner pleaded that he is unable to retain an attorney.

V

PETITIONER'S MOTION FOR LEAVE TO FILE ONE-DAY LATE PETITION FOR REHEARING AND REHEARING EN BANC REMAINS UNRESOLVED BY THE COURT OF APPEALS

The Clerk of the Court of Appeals transmitted the petition for rehearing and rehearing en banc to the 3-judge appellate panel but not to the full court because the petition was one-day late.

However, in Harper v. Young, 64 F.3d 563 (10th Cir. Case No. 95-5026) the clerk transmitted to the en banc court appellee's two-day late petition for rehearing and suggestion for rehearing en banc. The en banc court, apparently sua sponte, granted appellee's leave to file a late petition for rehearing and suggestion for rehearing en banc. As noted with approval in Young v. Harper, 520 U.S. 143, 147 n. 1 (1997).

Citing Harper, supra, petitioner filed motion for leave to file his one-day late petition for rehearing and rehearing en banc. The clerk transmitted the motion to the 3-judge panel but not to the full court. The panel denied the motion adding that "the original petition for rehearing with suggestion for hearing en banc was denied on the merits." pp. A1-2, *infra*.

The Clerk and the panel in their actions and inactions may have relied on 10th Cir. R. 35.3, which states that "Untimely en banc request will be transmitted to the full court only upon express order of the hearing panel." The rule gives the 3-judge hearing panel, arbitrary and non-reviewable power to decide which late petition for rehearing en banc request will be transmitted to the full court. This violates 28 U.S.C. § 461 (c) which commit the en banc power to the full court. No other circuit has a similar rule. The rule should be rescinded. 28 U.S.C. § 46 (c) commits the en banc power to the majority of judges in regular active service. They may

revise or withdraw whatever responsibility may have delegated to the panel. Western P.R. Corp. v. Western P.R. Co., 345 U.S. 247, 261 (1953).

CONCLUSION

For these various reasons, this petition for certiorari should be granted.

Respectfully submitted,

Mahinder S. Uberoi, *pro se*

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 03-1498

MAHINDER S. UBEROI,

Plaintiff-Appellant,

v.

CITY OF BOULDER; K. YOKOMIZO-BURTON; DON SPICELY; GRETCHEN KING,

Defendants-Appellees.

No. 03-1500

MAHINDER S. UBEROI,

Plaintiff-Appellant,

v.

HENRY F. ANTON; MAUREEN JOHNSON EDIGER; SUSAN C. KIRK; TOM LUCERO; JIM MARTIN; NORWOOD L. ROBB; JERRY G. RUTLEDGE; ROBERT SIEVERS; PETER STEINHAUER; JOHN BUECHNER; RICHARD BYYNY; PHILLIP DISTEFANO; ROSS COROTIS; MICHAEL LIGHTNER; WILLIAM M. MARINE; THOMAS J. NAPIERKOWSKI; ROBERT L. LORCH; ROBLEY D. RHINE,

Defendants-Appellees.

ORDER Filed December 30, 2004

Before McCONNELL, HOLLOWAY and PORFILIO, Circuit Judges.

This matter is before the court on Appellant's "Motion for Leave to File One-Day Late Petition for Rehearing and Rehearing En Banc," and "Motion to Withdraw Order." The

motions are denied. The original petition for rehearing with suggestion for rehearing en banc was denied on the merits.

Entered for the Court
PATRICK FISHER, Clerk of Court
By: [illegible, unnamed]
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 03-1498

MAHINDER S. UBEROI,

Plaintiff-Appellant,

v.

CITY OF BOULDER; et al.,

Defendants-Appellees.

No. 03-1500

MAHINDER S. UBEROI,

Plaintiff-Appellant,

v.

HENRY F. ANTON; et al.,

Defendants-Appellees.

ORDER Filed December 17, 2004

Before McCONNELL, HOLLOWAY and PORFILIO, Circuit Judges.

Appellant's petition for rehearing is denied.

Entered for the Court
PATRICK FISHER, Clerk of Court

by: Karen Phillips
Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 03-1498

MAHINDER S. UBEROI,

Plaintiff-Appellant,

v.

CITY OF BOULDER; K. YOKOMIZO-BURTON; DON SPICELY; GRETCHEN KING,

Defendants-Appellees.

No. 03-1500

MAHINDER S. UBEROI,

Plaintiff-Appellant,

v.

HENRY F. ANTON; MAUREEN JOHNSON EDIGER; SUSAN C. KIRK; TOM LUCERO; JIM MARTIN; NORWOOD L. ROBB; JERRY G. RUTLEDGE; ROBERT SIEVERS; PETER STEINHAUER; JOHN BUECHNER; RICHARD BYYNY; PHILLIP DISTEFANO; ROSS COROTIS; MICHAEL LIGHTNER; WILLIAM M. MARINE; THOMAS J. NAPIERKOWSKI; ROBERT L. LORCH; ROBLEY D. RHINE,

Defendants-Appellees.

ORDER AND JUDGEMENT* Filed October 18, 2004

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and

Before McCONNELL, HOLLOWAY and PORFILIO, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of these appeals. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The cases are therefore ordered submitted without oral argument.

Plaintiff Mahinder S. Uberoi appeals the district court's dismissal of his two civil complaints for failure to comply with standing orders requiring him to retain a licensed attorney, and its denial of several post-dismissal motions challenging the dismissals. The two appeals have been consolidated for procedural purposes, and we affirm.

Because of the numerous frivolous and vexatious suits plaintiff had filed pro se, the United States District Court for the District of Colorado entered a permanent injunction against him in 1989 prohibiting him from proceeding as the proponent of any civil claim in the federal district of Colorado without representation by a licensed attorney The injunction was upheld on appeal. Bd. of Regents v. Uberoi, Nos. 89-1117, 89-1304, 89-1337, slip. op. (10th Cir. May 25, 1990) (unpublished disposition). In 2002, plaintiff, proceeding pro se, filed the two civil complaints now at issue. The district court denied plaintiff's requests to vacate or modify the 1989 permanent injunction, ruling the injunction remained valid and enforceable. The district court gave plaintiff thirty days to retain counsel or face dismissal of his complaints. Plaintiff appealed that order, and this court affirmed. Uberoi v. City of Boulder, 64 Fed. Appx. 169 (10th Cir. May 1, 2003) (unpublished disposition).

The district court then gave plaintiff an additional thirty days to retain counsel. When plaintiff failed to do so,

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judgments; nevertheless, an order and judgment maybe cited under the terms and conditions of 10th Cir. R. 36.3.

the court dismissed the two complaints. Plaintiff filed three post-dismissal motions: the first sought to amend the order of dismissal because he was unable to retain counsel, the second sought to disqualify the district court judge, and the third sought to select a judge from a different federal judicial district to hear the disqualification motion. The district court denied all three motions.

This court reviews a dismissal for noncompliance with court orders for abuse of discretion. See Jones v. Thompson, 996 F.2d 261, 264 (10th Cir. 1993). Plaintiff continues to relitigate the propriety of the injunction, raising the same issues and arguments previously rejected in his prior appeals. As this court has held, these arguments are foreclosed by the doctrine of collateral estoppel. See Uberoi, 64 Fed. Appx. at 173. We reject plaintiff's accusation that Judge Kane should have disqualified himself under 28 U.S.C. § 455, because no reasonable factual basis exists for calling the judge's impartiality into question. See United States v. Cooley, 1 F.3d 985, 993 (10th Cir. 1993).

The judgment of the district court is AFFIRMED.

Entered for the Court
John C. Porfilio
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 02-K-301

MAHINDER S. UBEROI,

Plaintiff,

v.

HENRY F. ANTON; MAUREEN JOHNSON EDIGER; SUSAN C. KIRK; TOM LUCERO; JIM MARTIN; NORWOOD L. ROBB; JERRY G. RUTLEDGE; ROBERT

SIEVERS; PETER STEINHAUER; JOHN BUECHNER; RICHARD BYYNY; PHILLIP DISTEFANO; ROSS COROTIS; MICHAEL LIGHTNER; WILLIAM M. MARINE; THOMAS J. NAPIERKOWSKI; ROBERT L. LORCH and ROBLEY D. RHINE,

Defendants.

ORDER Filed September 24, 2003

Kane, J.

Upon consideration of Plaintiff's three motions, (1) Motion to Randomly Select a District Judge from Another District Who Shall Hold a Hearing on Motion to Disqualify Judge Kane, (2) Motion to Disqualify Judge John Kane from Ruling on Plaintiff's Motion to Alter or Amend judgment, and (3) Motion to Alter or Amend Judgment Under Rule 59, all filed September 22, 2003, it is
ORDERED that the motions are DENIED.
Dated this 23 day of September, 2003.

BY THE COURT:
JOHN L. KANE, SENIOR JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 01-K-2151

MAHINDER S. UBEROI,

Plaintiff,

v.

CITY OF BOULDER, K. YOKOMIZO-BURTON, DON SPICELY, and GRETCHEN KING,

Defendants.

ORDER Filed September 24, 2003

Kane, J.

Upon consideration of Plaintiff's three motions, (1) Motion to Randomly Select a District Judge from Another District Who Shall Hold a Hearing on Motion to Disqualify Judge Kane, (2) Motion to Disqualify Judge John Kane from Ruling on Plaintiff's Motion to Alter or Amend judgment, and (3) Motion to Alter or Amend Judgment Under Rule 59, all filed September 22, 2003, it is

ORDERED that the motions are DENIED.

Dated this 23 day of September, 2003.

BY THE COURT:
JOHN L. KANE, SENIOR JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 02-K-301

MAHINDER S. UBEROI,

Plaintiff;

v.

HENRY F. ANTON; MAUREEN JOHNSON EDIGER; SUSAN C. KIRK; TOM LUCERO; JIM MARTIN; NORWOOD L. ROBB; JERRY G. RUTLEDGE; ROBERT SIEVERS; PETER STEINHAUER; JOHN BUECHNER; RICHARD BYYNY; PHILLIP DISTEFANO; ROSS COROTIS; MICHAEL LIGIITNER; WILLIAM M. MARINE; THOMAS J. NAPIERKOWSKI ROBERT L.

LORCH and ROBLEY D. RHINE,
Defendants.

ORDER OF DISMISSAL Filed September 10, 2003

Kane, J.

On September 5, 2003, the United States Court of Appeals for the Tenth Circuit affirmed my August 8, 2002 Order refusing to vacate or modify the 1989 permanent injunction that bars Mr. Uberoi from proceeding as a proponent of any civil claim in the United States District Court for the District of Colorado without the representation of an attorney licensed to practice in the State of Colorado and admitted to practice in this court. As stated in the August 8, 2002 Order, the 1989 injunction bars this *pro se* action and requires that I grant Defendants' Motion to Dismiss.

In both the August 8, 2002 Order and an Order entered May 5, 2003, I notified Mr. Uberoi that this action would be dismissed without further notice unless he retained an attorney and said attorney entered an appearance in this action by a stated date. Mr. Uberoi did not take advantage of either opportunity to maintain this action in compliance with the 1989 permanent injunction. Accordingly, as provided in the referenced Orders, I hereby GRANT Defendants' Motion to Dismiss, filed June 11, 2002, and order this action DISMISSED without prejudice.

Dated this 8 day of September, 2003.

JOHN L. KANE, SENIOR JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 02-K-2151

MAHINDER S. UBEROI,

Plaintiff;

v.

CITY OF BOULDER, K. YOKOMIZO-BURTON, DON SPICELY, and GRETCHEN KING,

Defendants.

ORDER OF DISMISSAL Filed September 10, 2003

Kane, J.

On September 5, 2003, the United States Court of Appeals for the Tenth Circuit affirmed my August 8, 2002 Order refusing to vacate or modify the 1989 permanent injunction that bars Mr. Uberoi from proceeding as a proponent of any civil claim in the United States District Court for the District of Colorado without the representation of an attorney licensed to practice in the State of Colorado and admitted to practice in this court. As stated in the August 8, 2002 Order, the 1989 injunction bars this *pro se* action.

In both the August 8, 2002 Order and an Order entered May 5, 2003, I notified Mr. Uberoi that this action would be dismissed without further notice unless he retained an attorney and said attorney entered an appearance in this action by a stated date. Mr. Uberoi did not take advantage of either opportunity to maintain this action in compliance with the 1989 permanent injunction. Accordingly, as provided in the referenced Orders, I hereby DISMISS this action without prejudice.

IT IS SO ORDERED this 8 day of September, 2003.

JOHN L. KANE, SENIOR JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 02-1364

MAHINDER S. UBEROI,

Plaintiff-Appellant,

v.

CITY OF BOULDER; et al.,

Defendants-Appellees.

No. 02-1365

MAHINDER S. UBEROI,

Plaintiff-Appellant,

v.

HENRY F. ANTON; et al.,

Defendants-Appellees.

ORDER Filed August 27, 2003

Before SEMOUR, HENRY and BRISCOE, Circuit Judges.

Appellant's petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court
PATRICK FISHER, Clerk of Court
By: [illegible, unnamed]
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 02-K-301

MAHINDER S. UBEROI,

Plaintiff;

v.

HENRY F. ANTON; MAUREEN JOHNSON EDIGER; SUSAN C. KIRK; TOM LUCERO; JIM MARTIN; NORWOOD L. ROBB; JERRY G. RUTLEDGE; ROBERT SIEVERS; PETER STEINHAUER; JOHN BUECHNER; RICHARD BYYNY; PHILLIP DISTEFANO; ROSS COROTIS; MICHAEL LIGIITNER; WILLIAM M. MARINE; THOMAS J. NAPIERKOWSKI ROBERT L. LORCH and ROBLEY D. RHINE,

Defendants.

ORDER Filed May 5, 2003
Kane, J.

In an Order entered on September 12, 2002, I stayed this action pending final resolution of Mr. Uberoi's appeal of my August 8, 2002 Order enforcing the 1989 permanent injunction that bars Mr. Uberoi from proceeding as a proponent of any civil claim in the United States District Court for the District of Colorado without the representation of an attorney licensed to practice in the State of Colorado and admitted to practice in this court. On May 1, 2003, the United States Court of Appeals for the Tenth Circuit affirmed the August 8, 2002 Order. Accordingly, the stay based on Mr. Uberoi's appeal is hereby dissolved.

Consistent with the August 8, 2002 Order, I reiterate that Defendants' Motion to Dismiss will be granted and this action will be dismissed without further notice to Mr. Uberoi unless he retains an attorney licensed to practice in the State of Colorado and admitted to practice in this court and said

attorney enters an appearance in this action. Counsel for Mr. Uberoi must enter its appearance in this action on or before June 2, 2003 or this action will be dismissed without further notice as provided in this Order and the August 8, 2002 Order. All other matters in this action remain STAYED until further notice from the court.

IT IS SO ORDERED this 2 day of May, 2003.

JOHN L. KANE, SENIOR JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 02-K-2151

MAHINDER S. UBEROI,

Plaintiff;

v.

CITY OF BOULDER, K. YOKOMIZO-BURTON, DON SPICELY, and GRETCHEN KING,

Defendants.

ORDER Filed May 5, 2003
Kane, J.

In an Order entered on September 12, 2002, I stayed this action pending final resolution of Mr. Uberoi's appeal of my August 8, 2002 Order enforcing the 1989 permanent injunction that bars Mr. Uberoi from proceeding as a proponent of any civil claim in the United States District Court for the District of Colorado without the representation of an attorney licensed to practice in the State of Colorado and admitted to practice in this court. On May 1, 2003, the United States Court of Appeals for the Tenth Circuit affirmed

the August 8, 2002 Order. Accordingly, the stay based on Mr. Uberoi's appeal is hereby dissolved.

Consistent with the August 8, 2002 Order, this action will be dismissed without further notice to Mr. Uberoi unless he retains an attorney licensed to practice in the State of Colorado and admitted to practice in this court and said attorney enters an appearance in this action. Counsel for Mr. Uberoi must enter its appearance in this action on or before June 2, 2003 or this action will be dismissed without further notice as provided in this Order and the August 8, 2002 Order. All other matters in this action remain STAYED until further notice from the court.

IT IS SO ORDERED this 2 day of May, 2003.

JOHN L. KANE, SENIOR JUDGE
UNITED STATES DISTRICT COURT

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

No. 02-1364

MAHINDER S. UBEROI,

Plaintiff-Appellant,

v.

CITY OF BOULDER; K. YOKOMIZO-BURTON; DON SPICELY; GRETCHEN KING,

Defendants-Appellees.

No. 02-1365

MAHINDER S. UBEROI,

Plaintiff-Appellant,

v.

HENRY F. ANTON; MAUREEN JOHNSON EDIGER; SUSAN C. KIRK; TOM LUCERO; JIM MARTIN; NORWOOD L. ROBB; JERRY G. RUTLEDGE; ROBERT SIEVERS; PETER STEINHAUER; JOHN BUECHNER; RICHARD BYYNY; PHILLIP DISTEFANO; ROSS COROTIS; MICHAEL LIGHTNER; WILLIAM M. MARINE; THOMAS J. NAPIERKOWSKI; ROBERT L. LORCH; ROBLEY D. RHINE,

Defendants-Appellees.

ORDER AND JUDGEMENT* Filed May 1, 2003

Before SEYMOUR, HENRY and BRISCOE, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of these appeals. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The cases are therefore ordered submitted without oral argument.

These cases were consolidated on appeal because both were dismissed as a result of the enforcement of a permanent injunction prohibiting plaintiff/appellant Mahinder S. Uberoi from proceeding pro se as the proponent of any civil claim in the District of Colorado. See Bd. of Regents v. Uberoi, Nos. 89-1117, 89-1304, 89-1337 (10th Cir. May 25, 1990) (affirming issuance of permanent injunction) & (10th Cir. July 6, 1990) (modifying previous order and denying petition for rehearing). Mr. Uberoi urges reversal and vacation of the injunction. Because Mr. Uberoi has not demonstrated that the district court abused its discretion in refusing to vacate or modify the injunction, we

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* This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment maybe cited under the terms and conditions of 10th Cir. R. 36.3.

affirm.

I. Appeal No. 02-1365

Appeal No. 02-1365 concerns Mr. Uberoi's continuing attempts to sue the University of Colorado and its officials and employees for what he perceives as unlawful discriminatory employment policies and practices occurring since 1963. In 1982 Mr. Uberoi first sued the University and sixty-four of its officials or employees individually for alleged violation of his civil rights in federal district court. This case was dismissed due to Mr. Uberoi's failure to comply with the courts orders regarding discovery, and attorney's fees were awarded to the University. We affirmed on appeal and on rehearing. In addition, between 1982 and 1985, he filed three actions in Colorado state courts against the University, its employees, and its attorneys, alleging civil rights violations, unlawful denial of records, and illegal detention and assault. In some of these cases, the court found the litigation to be frivolous and groundless and assessed attorney fees in favor of the University. In 1985 Mr. Uberoi also sued in federal court the state-court judge who had ruled against him on certain issues in one of these actions.

As a result of these and two other unrelated state-court suits in which the state court found that Mr. Uberoi had acted frivolously and vexatiously, the University's Board of Regents obtained an injunction in the Boulder County District Court in 1988 enjoining Mr. Uberoi from appearing pro se in actions he brought in that court. In 1989, the University sought and obtained a similar injunction in federal district court prohibiting Mr. Uberoi from proceeding pro se as the proponent of any civil claim. We thoroughly reviewed the basis of the district court's ruling and agreed with its conclusion that a permanent injunction was necessary because "other procedural mechanisms to discourage meritless claims [had] proven unsuccessful" with him. Bd. of Regents v. Uberoi, No. 88-F-1323, slip. op. at 13 (Dist. Colo. Sept. 25, 1989) (order imposing permanent injunction).

Nevertheless, on February 14, 2002, Mr. Uberoi,

proceeding pro se, filed the most recent suit against the University, once again asserting civil rights, employment discrimination, and Federal False Claims Act claims arising from acts allegedly occurring in the 1970's and 1980's. He also accused the Board of retaliating against him in February 2000 by unlawfully revoking his tenured teaching position for having filed the suits in the 1980's. See R. Doc. I at 3-19. When the Board moved for enforcement of the 1989 injunction and dismissal of the suit, Mr. Uberoi urged modification or vacation of the injunction. On August 8, 2002, the district court concluded that the injunction remained valid, gave Mr. Uberoi thirty days to retain counsel or risk dismissal of the case without further notice, and stayed all action in the case until further notice. Mr. Uberoi appealed from that ruling on August 12, 2002. On September 12, 2002, the district court granted Mr. Uberoi's request for a stay pending this court's ruling on appeal.

II. Appeal No. 02-1364

In this case, on November 1, 2001, Mr. Uberoi filed a pro se complaint against the City of Boulder, two police officers, and the individual who made a public nuisance complaint against Mr. Uberoi that ultimately resulted in the seizure and sale of an inoperable vehicle. He alleged constitutional and civil rights violations and sought declaratory and injunctive relief. Having become aware of the permanent injunction in the civil case against the University, the district court ordered Mr. Uberoi to show cause why his civil complaint against these defendants should not also be dismissed. Mr. Uberoi made the same arguments in both orders to show cause. The court enforced the injunction and warned Mr. Uberoi that the case would be dismissed without notice if he did not obtain counsel, and the case took the same procedural course as the case against the University, with the court granting a stay pending appeal on September 12, 2002.

III. Appellate review

Although neither party addresses the issue, because

no final judgment has been entered in either case, we must first determine whether we have jurisdiction over the appeals. See McFarland v. Childers, 212 F.3d 1178, 1183 (10th Cir. 2000). We conclude that the district court's orders in both appeals are appealable collateral orders. See id. The orders conclusively determine the disputed question of whether the injunction is enforceable; they resolve an important issue completely separate from the merits of the action; and the orders are effectively unreviewable on appeal from a final judgment because Mr. Uberoi's right to proceed pro se will be irretrievably lost in the absence of an immediate appeal. See id. (listing attributes of appealable collateral order). "We review the district court's decision [whether] to modify an injunction under an abuse of discretion standard." John Zink Co. v. Zink, 241 F.3d 1256, 1260 (10th Cir. 2001).

IV. Discussion

Mr. Uberoi argues that the injunction should have been vacated or modified because of changed circumstances. See id. (noting that "[d]istrict courts retain power to modify injunctions in light of changed circumstances") (further quotation omitted). The first alleged change of circumstances is that, after the injunction prohibiting his pro se prosecution of civil cases was entered, in an unpublished order, a different panel of the Tenth Circuit reversed a similar injunction against a pro se plaintiff in an unrelated suit. The panel did so based on its conclusion that the filing restriction in that case should have been less broadly tailored.

Whether an injunction is properly tailored depends on the facts of that particular situation, see Cotner v. Hopkins, 795 F.2d 900, 902 (10th Cir. 1986), and, although unusual, we have never held that an order prohibiting a particular plaintiff from proceeding pro se in a civil case is too broad as a matter of law. Further, in the unpublished order cited by Mr. Uberoi, we noted that the particular plaintiff's history and reputation of suing his and others' lawyers, coupled with his financial situation, could foreclose his access to the courts altogether if the court applied a blanket prohibition to

proceeding pro se. Mr. Uberoi has failed to show similar facts in his case. Further, neither we nor the district court are bound by an unpublished ruling regarding a fact-specific determination in an unrelated case. See 10th Cir. R. 36.3(A).

The district court imposed the injunction in 1989 in part because it noted that the suit brought against Judge Richtel had been dismissed. Claims for monetary damages were dismissed on grounds of judicial immunity and for failure to state a claim; claims for injunctive relief were dismissed as moot because it was unlikely that Mr. Uberoi would appear before that judge again. Uberoi v. Richtel, Nos. 87-2635, 89-1185, slip op. at 2 (10th Cir. Feb. 7, 1990) (affirming dismissal of action). Mr. Uberoi argues that circumstances have changed because, as it turned out, he ended up appearing before that judge years later. This fact, however, does not obviate the conclusion that his other claims were lacking in legal and factual foundation.

Nor does the allegation that the Colorado legislature amended the Open Records Act as a result of Mr. Uberoi's lobbying efforts affect the propriety of the district court's decision not to modify the injunction. Finally, the fact that all defendants in a state case against the City of Boulder allegedly offered money judgments to Mr. Uberoi, which he allegedly accepted, does not mean that the case had a proper or valid legal foundation or that Mr. Uberoi "prevailed" in his legal arguments as a matter of law. The district court considered these arguments and concluded that the injunction should still stand. In doing so, it did not abuse its discretion, especially in light of the fact that the new suit against the Board of Regents attempted to relitigate old claims.

Mr. Uberoi also argues that circumstances have changed because one of the bases of imposing the injunction was that he had not paid sanctions against him, and those sanctions have now been paid. That fact alone, however, does not entitle Mr. Uberoi to a lifting of the injunction. Reviewing the record, we conclude that the district court did not err in holding that the permanent injunction should

remain valid.

Mr. Uberoi's attempts to relitigate the propriety of the injunction by arguing that it was unjustified in the first place are foreclosed by the doctrine of collateral estoppel. See Harrison v. Eddy Potash, Inc., 248 F.3d 1014, 1022 (10th Cir.) (setting forth elements of collateral estoppel), cert. denied, 534 U.S. 1019 (2001). Mr. Uberoi makes many arguments that we addressed over ten years ago when we affirmed issuance of the permanent injunction, and we will not revisit them here. We also note that Mr. Uberoi recently filed a frivolous suit against the EEOC in the United States District Court for the District of Columbia. See Uberoi v. EEOC, No. 01-5389, slip op. at **1 (D.C. Cir. June 10, 2002) (affirming dismissal of complaint for failure to state a claim and noting that Mr. Uberoi had also filed an unsuccessful petition for writ of mandamus), cert. denied, 123 S. Ct. 1649 (U.S. Mar. 31, 2003). We conclude that Mr. Uberoi's access to the courts has not been unlawfully or unreasonably obstructed by reason of the permanent injunction.

The United States District Court for the District of Colorado is AFFIRMED. The mandate shall issue forthwith.

Entered for the Court
Robert H. Henry
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 02-K-301

MAHINDER S. UBEROI,

Plaintiff;

v.

HENRY F. ANTON; MAUREEN JOHNSON EDIGER; SUSAN C. KIRK; TOM LUCERO; JIM MARTIN;

NORWOOD L. ROBB; JERRY G. RUTLEDGE; ROBERT SIEVERS; PETER STEINHAUER; JOHN BUECHNER; RICHARD BYYNY; PHILLIP DISTEFANO; ROSS COROTIS; MICHAEL LIGIITNER; WILLIAM M. MARINE; THOMAS J. NAPIERKOWSKI ROBERT L. LORCH and ROBLEY D. RHINE,

Defendants.

ORDER Filed September 12, 2002

Kane, J.

Plaintiff Mahinder S. Uberoi's Motion For Stay Pending Appeal, filed September 9, 2002, is GRANTED. This action is STAYED until final resolution of Plaintiff's appeal of this Court's Order of August 8, 2002.

IT IS SO ORDERED this 12 day of September, 2002.

BY THE COURT:
JOHN L. KANE, SENIOR JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 02-K-2151

MAHINDER S. UBEROI,

Plaintiff;

v.

CITY OF BOULDER, K. YOKOMIZO-BURTON, DON SPICELY, and GRETCHEN KING,

Defendants.

ORDER Filed September 12, 2002

Kane, J.

Plaintiff Mahinder S. Uberoi's Motion For Stay Pending Appeal, filed September 9, 2002, is GRANTED. This action is STAYED until final resolution of Plaintiff's appeal of this Court's Order of August 8, 2002.

IT IS SO ORDERED this 12 day of September, 2002.

BY THE COURT:
JOHN L. KANE, SENIOR JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 02-K-301

MAHINDER S. UBEROI,

Plaintiff;

v.

HENRY F. ANTON; MAUREEN JOHNSON EDIGER; SUSAN C. KIRK; TOM LUCERO; JIM MARTIN; NORWOOD L. ROBB; JERRY G. RUTLEDGE; ROBERT SIEVERS; PETER STEINHAUER; JOHN BUECHNER; RICHARD BYYNY; PHILLIP DISTEFANO; ROSS COROTIS; MICHAEL LIGIITNER; WILLIAM M. MARINE; THOMAS J. NAPIERKOWSKI ROBERT L. LORCH and ROBLEY D. RHINE,

Defendants.

ORDER Filed August 8, 2002

Kane, J.

This matter is before me on Defendants' Motion to

Dismiss, filed June 11, 2002, and Plaintiff Mahinder S. Uberoi's response, filed August 6, 2002. Having carefully considered the parties' arguments, and all applicable legal authorities, and being fully advised in the premises, I find the permanent injunction barring Mr. Uberoi "from proceeding as a proponent of any civil claim in the United States District Court for the District of Colorado without the representation of an attorney licensed to practice in the State of Colorado and admitted to practice in this court" remains valid and in effect. *See Board of Regents of the University of Colorado V. Uberoi,* No. 88-F-1323, Memorandum Opinion and Order at 14 (D. Colo. Sept *25,* 1989), *aff'd,* Nos. 89-1117, 89-1304, 89-1337 (10th Cir. May 25, 1990). Accordingly, Defendants' Motion will be granted and this action will be dismissed without further notice to Mr. Uberoi unless he retains an attorney licensed to practice in the State of Colorado and admitted to practice in this court and said attorney enters an appearance in this action on or before September 9, 2002. All other matters in this action are STAYED until further notice from the court.

IT IS SO ORDERED this 8th day of August, 2002.

BY THE COURT:
JOHN L. KANE, SENIOR JUDGE
UNITED STATES DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 02-K-2151

MAHINDER S. UBEROI,

Plaintiff;

v.

CITY OF BOULDER, K. YOKOMIZO-BURTON, DON SPICELY, and GRETCHEN KING,

Defendants.

ORDER Filed August 8, 2002

Kane, J.

This matter is before me on Plaintiff Mahinder S. Uberoi' S response to the Order to Show Cause why this action should not be dismissed, as entered July 22, 2002. Upon consideration of Mr. Uberoi's response, filed August 6, 2002, the Order to Show Cause is DISCHARGED, but only to allow Mr. Uberoi a limited period in which to retain counsel to represent him in this action. Mr. Uberoi's arguments notwithstanding, the permanent injunction barring Mr. Uberoi "from proceeding as a proponent of any civil claim in the United States District Court for the District of Colorado without the representation of an attorney licensed to practice in the State of Colorado and admitted to practice in this court" remains valid and in effect. *See Board of Regents of the University of Colorado V. Uberoi,* No. 88-F-1323, Memorandum Opinion and Order at 14 (D. Colo. Sept. 25, 1989), *aff'd,* Nos. 89-1117, 89-1304, 89-1337 (10th Cir. May *25,* 1990). Accordingly, this action will be dismissed without further notice to Mr. Uberoi unless he retains an attorney licensed to practice in the State of Colorado and admitted to practice in this court and said attorney enters an appearance in this action on or before September 9,2002. All other matters in this action remain STAYED until further notice from the court.

IT IS SO ORDERED this 8th day of August, 2002.

BY THE COURT:
JOHN L. KANE, SENIOR JUDGE
UNITED STATES DISTRICT COURT